

United States Bankruptcy Court
District of Oregon

In re:
Dawn Mechele Kennedy
Debtor

Case No. 15-35469-rld
Chapter 13

CERTIFICATE OF NOTICE

District/off: 0979-3

User: Admin.
Form ID: pdf015

Page 1 of 1
Total Noticed: 2

Date Rcvd: Dec 08, 2016

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Dec 10, 2016.

db +Dawn Mechele Kennedy, 3119 Diane Drive, Lake Oswego, OR 97035-2603

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
101187125 E-mail/Text: camanagement@mtb.com Dec 09 2016 01:32:52 Bayview Loan Servicing, LLC,
c/o M&T Bank, PO Box 840, Buffalo, NY 14240-0840

TOTAL: 1

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Transmission times for electronic delivery are Eastern Time zone.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Dec 10, 2016

Signature: /s/Joseph Speetjens

CM/ECF NOTICE OF ELECTRONIC FILING

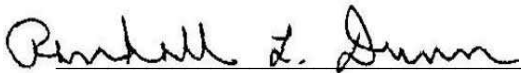
The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 8, 2016 at the address(es) listed below:

NONE.

TOTAL: 0

NOTICE IS GIVEN, and it is ordered, that the claim below shall be disallowed or allowed as recommended below and, unless any chapter 13 confirmation order entered hereafter provides otherwise, the amount of any arrearage will be fixed as recommended below, without further order unless within 44 days of the date in the 'FILED' stamp the creditor either: (1) sends, with a copy of this objection, the proper documentation to the trustee/debtor-in-possession and any other objecting party at the service address(es) below, and receives a written withdrawal of objection; or (2) files a written request for a hearing, setting forth the specific grounds for such request, with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with '3' or '4', at 1001 SW 5th Ave. #700, Portland OR 97204; or, if it begins with a '6' or '7', at 405 E 8th Ave #2600, Eugene OR 97401), and (b) serves a copy thereof on the trustee/debtor-in-possession and any other objecting party at the service address(es) below. [NOTE: This Order does not indicate how the Court will rule if a timely request for hearing is filed.]

The filer of the objection is hereby directed to the related notice regarding service of this objection.


RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re

Dawn Mechele Kennedy

Debtor(s)

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Case No. 15- 35469-rld13

Amended

OBJECTION TO CLAIM, **AND**
ORDER AND NOTICE THEREON

1. The undersigned objects to Claim No. 10-1, filed in the amount of \$ 299,652.74, by:
(Enter the current claimant's name, proof of claim notice address, and FRBP 7004 service address(es) of claimant)
-Bayview Loan Servicing, LLC, 4425 Ponce de Leon Blvd., 5th Floor, Coral Gables, FL 33146
-Bayview Loan Servicing, LLC, c/o Richard O'Brien, President, 4425 Ponce de Leon Blvd., 5th Floor, Coral Gables, FL 33146
-M&T Bank, PO Box 840, Buffalo, NY 14240-0840
-M&T Bank, c/o Robert G. Wilmers, CEO, PO Box 844, Buffalo, NY 14240
-Mr. Nathan Smith, AAL, Malcolm Cisneros, 2112 Business Center Drive, Irvine, CA 92612

2. The undersigned objects to such claim on the ground(s) it (check all applicable sections):

- ☐ Duplicates Claim No. _____ filed by _____.
- ☐ Fails to assert grounds for priority.
- ☐ Was not filed on behalf of a real party in interest (e.g., does not include a copy of the assignment(s) upon which it is based).
- ☐ Appears to include interest or charges accrued after the filing.

- ☐ Appears that value of collateral exceeds debt.
- ☐ Arrearage asserted is incorrect.
- ☐ The creditor filed a secured claim, but neither: (a) specified that any portion of the claim should be treated as unsecured nor (b) requested a hearing to determine the value of their collateral, and therefore the trustee objects to any portion of the claim being treated as unsecured.
- ☐ The creditor filed a claim for taxes assessed against real or personal property of the debtor(s). The undersigned represents that the interest of the estate in the real or personal property against which the above taxes were assessed has no value in that the estate has no equity or interest in such property, and so under the provisions of 11 U.S.C. §502(b) no order can be made for payment of such taxes.
- ☐ Proof of claim does not include documentation required by FRBP 3001(c) and (d) (e.g., a copy of the note, or documents establishing secured status).
- ☒ Other:
Previous claim objection [Docket Item #36] has been sustained but claim objection erroneously listed the arrearage as \$9,046.73. Actual arrearage is \$0. The Loan Modification attached to the Proof of Claim indicates that the escrow shortage claimed by the creditor to be unpaid was in fact capitalized in the loan modification. Debtor was current on all payments due under the loan modification from its inception through to the filing of the chapter 13 bankruptcy case.

3. The undersigned recommends said claim be (check applicable box(es)):

- ☐ Disallowed in full.
- ☐ (If objection is based on failure to provide documentation) Disallowed for distribution: If an amended claim including the required documentation is not filed within 30 days of the filed date noted above, no distribution on account of the claim will be made by the trustee or debtor.
- ☒ Allowed as a SECURED claim for \$ 244,324.74; a PRIORITY UNSECURED claim for \$ 0.00; AND a NONPRIORITY UNSECURED claim for \$ 0.00. [You must fill in each blank even if it is \$0.]
- ☒ (If amount of arrearage is contested) The amount of the arrearage is \$ 0.

4. **THE UNDERSIGNED CERTIFIES THAT** a copy of any Withdrawal of this Objection will be served on all parties that were served a copy of this Objection (i.e., the U.S. Trustee, any trustee, debtor(s), the creditor at the address shown above, and their respective attorneys; and, if the creditor is a federal agency, on the U.S. Attorney for the District of Oregon and the U.S. Attorney General).

DATE: 12/07/16 /s/ Michael D. O'Brien, Counsel to Debtor

Objecting Party Signature AND Relation to Case

Michael D. O'Brien, 12909 SW 68th Parkway, Portland, OR 97223

Objecting Party Name AND Service Address (Type or Print)

503-786-3800

Objecting Party Phone Number

(If Debtor is Objecting Party) Debtor's Address AND Taxpayer I.D.#(s) (last 4 digits)

Fill in this information to identify the case:

Debtor 1 Dawn Mechele Kennedy

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: _____ District of OREGON
(State)

Case number 15-35469-rld13

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Bayview Loan Servicing, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>M&T Bank</u> Name <u>PO Box 840</u> Number Street <u>Buffalo, NY 14240-0840</u> City State Zip Code Contact phone _____ Contact email _____ Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) <u>M&T Bank</u> Name <u>PO Box 1288, Attn: Payment Processing</u> Number Street <u>Buffalo, NY 14240-1288</u> City State Zip Code Contact phone _____ Contact email _____
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>XXXXXX5765</u>
7. How much is the claim?	\$ <u>299,652.74</u> Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Money Loaned</u>
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. The claim is secured by a lien on property Nature of property: <input checked="" type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . Describe: <u>3119 DIANE DR, LAKE OSWEGO, OR 97035</u> <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: <u>Deed of Trust</u> Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ <u>299,652.74</u> Amount of the claim that is unsecured: \$ <u>0.00</u> (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ <u>9,612.71</u> Annual Interest Rate (when case was filed) <u>2.000</u> % <input type="checkbox"/> Fixed <input checked="" type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. *Check all that apply*

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)	\$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4)	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

☐ I am the creditor

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date March 17, 2016

/s/ Nathan F. Smith
Signature

Print the name of the person who is completing and signing this claim:

Name	<u>Nathan</u>	<u>F</u>	<u>Smith</u>
	First name	Middle name	Last name
Title	<u>Attorney for M&T Bayview</u>		
Company	<u>MALCOLM + CISNEROS, A Law Corporation</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>2112 Business Center Drive</u>		
	Number	Street	
	<u>Irvine</u>	<u>California</u>	<u>92612</u>
	City	State	Zip Code
Contact	<u>(949) 252-9400</u>	Email	<u>nathan@mclaw.org</u>

(12/15)

(12/15)

\$9,612.71

Part 5 : Loan Payment History from First Date of Default

\$9,612.71

PROOF OF SERVICE

I am employed by the law firm of Malcolm & Cisneros in the county of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 2112 Business Center Drive, Second Floor, Irvine, California 92612

On March 17, 2016, I caused to be served the document entitled:

PROOF OF CLAIM

on the following interested parties:

Debtor: Dawn Mechele Kennedy 3119 Diane Drive Lake Oswego, OR 97035	Debtor's Attorney: Michael D O'Brien 12909 SW 68th Parkway, Suite 160 Portland, OR 97223
CHAPTER 13 TRUSTEE: Wayne Godare 222 SW Columbia St #1700 Portland, OR 97201	

☒ (By Mail) I caused each envelope, with postage prepaid, to be placed in the United States Mail at Irvine, California

☐ (By Hand) I caused each envelope to be delivered by hand

☐ (By Overnight Courier) I caused each envelope, with postage prepaid, to be sent by Federal Express/Express Mail.

☐ (By Facsimile Transmission) I caused each document to be sent by automatic facsimile transmission to the following telephone numbers and confirmed by voice communication that the transmission was received:

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction service was made and that the foregoing is true and correct and this declaration was executed on the date indicated below at Irvine, California.

Dated: March 17, 2016

/s/ Erik Groen

Erik Groen

(ii) the Modification Effective Date (as defined in Section 3) has occurred. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Agreement.

3. The Modification.

If my representations and covenants in Section 1 continue to be true in all material respects and all preconditions to the modification set forth in Section 2 have been met, the Loan Documents will automatically become modified on 10/01/2014 (the "Modification Effective Date") and all unpaid late charges that remain unpaid will be waived. I understand that if I have failed to make any payments as a precondition to this modification under a trial period plan, this modification will not take effect. The first modified payment will be due on 10/01/2014.

A. The new Maturity Date will be: 09/01/2054.

B. The modified principal balance of my Note will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges, collectively, "Unpaid Amounts") less any amounts paid to the Lender but not previously credited to my Loan. The new principal balance of my Note will be \$ 239,671.25 (the "New Principal Balance"). I understand that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in effect under this Agreement. I also understand that this means interest will now accrue on the unpaid Interest that is added to the outstanding principal balance, which would not happen without this Agreement.

C. \$ 55,200.00 of the New Principal Balance shall be deferred (the "Deferred Principal Balance") and I will not pay interest or make monthly payments on this amount. The New Principal Balance less the Deferred Principal Balance shall be referred to as the "Interest Bearing Principal Balance" and this amount is \$ 184,471.25. Interest at the rate of 2.000% will begin to accrue on the Interest Bearing Principal Balance as of 09/01/2014 and the first new monthly payment on the Interest Bearing Principal Balance will be due on 10/01/2014. My payment schedule for the modified Loan is as follows:

Years	Interest Rate	Interest Rate Change Date	Monthly Principal and Interest Payment Amount	Estimated Monthly Escrow Payment Amount*	Total Monthly Payment	Payment Begins On	Number of Monthly Payments

MULTISTATE HOME AFFORDABLE MODIFICATION AGREEMENT - Single Family - Fannie Mae / Freddie Mac UNIFORM INSTRUMENT Form 3157 3/09 (rev. 10/10) V 1.6 Loan No. [REDACTED] (Page 3 of 9 pages)